

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS  
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> KWAME RAOUL,	)	
Attorney General of the State of Illinois, and	)	
<i>ex rel.</i> ROBERT BERLIN, State’s Attorney	)	
for DuPage County, Illinois,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2018 CH 001329
	)	
STERIGENICS U.S., LLC,	)	
a Delaware limited liability company,	)	
	)	
Defendant.	)	

**PEOPLE’S MEMORANDUM IN SUPPORT OF THE  
JOINT MOTION TO ENTER PROPOSED CONSENT ORDER**

The People of the State of Illinois, *ex rel.* Kwame Raoul, Attorney General of the State of Illinois, and *ex rel.* Robert Berlin, State’s Attorney for DuPage County (“People”), on their own behalf and at the request of the Illinois Environmental Protection Agency (“IEPA”), respectfully submit this Memorandum in Support of the Joint Motion to Enter the Proposed Consent Order.

**I. INTRODUCTION**

The proposed Consent Order, if entered, will resolve the People’s claims in the above-referenced case filed on October 30, 2018, and require the dismissal of the related case filed by Sterigenics U.S., LLC (“Sterigenics”) on May 6, 2019, *Sterigenics U.S., LLC v. Kim et al.*, Case No. 2019CH000566 (the “Seal Order Litigation”). The proposed Consent Order is consistent with, and provides additional requirements beyond those in, Illinois’ new law regulating ethylene oxide (“EtO”) sterilization facilities, 415 ILCS 5/9.16, known as the Matt Haller Act.<sup>1</sup> The Matt Haller

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<sup>1</sup> The Matt Haller Act, enacted as Public Act 101-22, became effective on June 21, 2019. It amends the Illinois Environmental Protection Act to add a new Section 9.16.

Act sets the strictest requirements in the United States on EtO sterilization facilities, including Sterigenics' facilities in Willowbrook, Illinois, located at 7775 South Quincy Street ("Willowbrook I") and 830 Midway Street ("Willowbrook II" and together with Willowbrook I, the "Site"). The Consent Order builds on the Matt Haller Act by prohibiting the use of EtO at Sterigenics' Willowbrook facilities unless and until Sterigenics makes drastic improvements to their emissions control systems.

The proposed Consent Order prohibits Willowbrook I from resuming commercial sterilization operations using EtO ("Operations") unless and until Sterigenics installs new emissions capture and control systems that must be approved by IEPA. Sterigenics recently applied for a construction permit from IEPA seeking to implement new emissions capture and control systems at Willowbrook I, and that application remains pending. For any installed, new emissions capture and control systems, the proposed Consent Order requires Sterigenics to demonstrate through testing that these systems capture 100% of the EtO within the facility and meet a required control efficiency of 99.9% or 0.2 ppm—the most stringent requirement of its kind in the nation. If Sterigenics fails these tests, the proposed Consent Order requires Willowbrook I to cease Operations immediately.

The proposed Consent Order prohibits Willowbrook II from resuming Operations indefinitely. The proposed Consent Order does not allow Willowbrook II to resume Operations unless and until Sterigenics overhauls the emissions control systems at that facility and obtains approval from IEPA through the same process applicable to Willowbrook I. Upon resuming Operations, Willowbrook II would also be subject to the same stringent testing requirements applicable to Willowbrook I. Sterigenics has not applied for a construction permit from IEPA for

Willowbrook II, which is one of several prerequisites for lifting the prohibition on Operations imposed by the proposed Consent Order.

Together, the requirements imposed by the proposed Consent Order and the newly enacted Matt Haller Act will ensure that EtO emissions from the Site are negligible and not a public health hazard. Through implementing these requirements, IEPA will be able to ensure that the Site's EtO emissions are well below the amount of EtO that testing shows already exists (known as "urban background") in ambient air in DuPage County and other Chicago-area communities. Additionally, Sterigenics' EtO emissions will not cause a lifetime cancer risk in the surrounding community that is above the 1 chance in 10,000 "upper bound" threshold that is relied upon by the United States Environmental Protection Agency ("USEPA"). In fact, after the required improvements, the lifetime cancer risk from Sterigenics' EtO emissions will be much closer to 1 chance in 1,000,000—USEPA's most protective standard.

The terms and conditions of the proposed Consent Order demonstrate that IEPA, the Attorney General, and the DuPage County State's Attorney have met or exceeded the General Assembly's mandate to protect human health and the environment. As the proposed Consent Order is fair, reasonable, and consistent with existing law, the People respectfully request the Court's entry.

## **II. BACKGROUND**

### **A. The People's Case**

The People's Complaint in this case, as amended on June 6, 2019 ("Complaint"), alleges that Sterigenics, through its emissions of EtO, (a) caused, threatened or allowed air pollution in violation of Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) (2018), and Section 201.141 of the Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm.

Code 201.141; and (b) created and maintained a common law public nuisance (the “People’s Case”). The Complaint seeks permanent injunctive relief to address Sterigenics’ alleged air pollution from its Operations at the Site and ensure the protection of public health in the surrounding community by: 1) “setting operational limits on the Site”; and 2) “capturing 100% of all EtO emissions and reducing EtO emissions to the atmosphere from each exhaust point at the Site by at least 99.9% or to 0.2 parts per million”. (Complaint, Count I at 17-18, Count II at 19.) As discussed further below, the proposed Consent Order provides the relief that the People seek in the Complaint.

### **B. The Seal Order**

On February 15, 2019, John Kim, then Acting Director of IEPA,<sup>2</sup> issued a Seal Order pursuant to 415 ILCS 5/34(b) that sealed “[a]ll storage containers of ethylene oxide” at the Site, “until measures are in place to prevent emissions of ethylene oxide that contribute to ambient levels of ethylene oxide which present a public health hazard to residents and off-site workers in the Willowbrook community” (the “Seal Order”). (Complaint, Ex. 1, Seal Order ¶ 19.) In issuing the Seal Order, IEPA took summary enforcement action, because it found that Sterigenics’ EtO emissions were “continuing to contribute to ambient levels of ethylene oxide in the atmosphere,” which created an “imminent and substantial endangerment to public health or welfare.” (Seal Order ¶ 18.) The Seal Order was based, in part, on “ambient air sampling [that] was conducted by the United States Environmental Protection Agency and the Village of Willowbrook in November and December of 2018 and January and February of 2019.” (Complaint, Ex. 1, Seal Order ¶ 14.)

### **C. The Seal Order Litigation**

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<sup>2</sup> On May 31, 2019, John Kim was confirmed as the Director of IEPA by the Illinois Senate.

In response to IEPA's issuance of the Seal Order, on February 18, 2019, Sterigenics challenged the Seal Order by filing an action in federal court, styled as *Sterigenics U.S., LLC v. Kim et al.*, Case No. 19-cv-1219 (U.S. Dist. Ct., N.D. Ill.) (the "Federal Litigation"), which the federal court dismissed on May 3, 2019. Thereafter, on May 6, 2019, Sterigenics filed the Seal Order Litigation in this Court. In both the Federal Litigation and the Seal Order Litigation, Sterigenics named Director Kim and IEPA as defendants. The proposed Consent Order, if entered, requires that the parties file a joint stipulation of dismissal of the Seal Order Litigation with prejudice.

**D. The Matt Haller Act - 415 ILCS 5/9.16**

On June 21, 2019, Governor Pritzker signed Public Act 101-22, known as the Matt Haller Act, which created a new Section 9.16 in the Illinois Environmental Protection Act that provides a comprehensive set of requirements for EtO sterilization facilities. The Matt Haller Act is consistent with and furthers several purposes of the Illinois Environmental Protection Act, including "assur[ing] that adverse effects upon the environment are fully considered and borne by those who cause them," and "restor[ing], maintain[ing], and enhanc[ing] the purity of the air of this State. . . ." 415 ILCS 5/2(b) (2018); 415 ILCS 5/8 (2018).

**E. The IEPA's, Attorney General's, and DuPage County State's Attorney's role in Environmental Protection and Enforcement**

IEPA was created by and derives its authority from Section 4 of the Illinois Environmental Protection Act. 415 ILCS 5/4 (2018). The General Assembly adopted the Illinois Environmental Protection Act "to establish a unified, statewide program to restore, protect and enhance the quality of our State's environment." *Nat'l Marine, Inc. v. Illinois E.P.A.*, 159 Ill. 2d 381, 386 (1994) (quoting 415 ILCS 5/2). IEPA's duties under the Illinois Environmental Protection Act include serving "investigative, permitting and/or prosecutorial functions." *Id.* at 387. IEPA's

responsibilities also include taking “summary enforcement action as is provided for by Section 34 of th[e] Act.” 415 ILCS 5/4(e) (2018) (referencing 415 ILCS 5/34 (2018)).

“[T]he Attorney General is the sole officer authorized to represent the People of this State in any litigation in which the People of the State are the real party in interest, absent a contrary constitutional directive.” *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485, 500 (1976). The Illinois Supreme Court has “consistently held, under both the 1870 and 1970 constitutions, that the Attorney General is the chief legal officer of the State; that is, he or she is ‘the law officer of the people, as represented in the State government, and its only legal representative in the courts.’” *Envtl. Prot. Agency v. Pollution Control Bd.*, 69 Ill. 2d 394, 398 (1977) (quoting *Fergus v. Russel*, 270 Ill. 304, 337 (1915)); *see also Pioneer Processing, Inc. v. E.P.A.*, 102 Ill. 2d 119, 138–39 (1984) (as “chief legal officer of this State, he has the duty and authority to represent the interests of the People of the State to insure a healthful environment”). In recognition of the Attorney General’s role to insure a healthful environment, Section 42(e) of the Illinois Environmental Protection Act empowers both the Attorney General and the DuPage County State’s Attorney with authority to seek “an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act . . . or to require such other actions as may be necessary to address violations. . . .” 415 ILCS 5/42(e) (2018). In addition, the Attorney General and the DuPage County State’s Attorney have common law authority to abate public nuisances. *See, e.g., People ex rel. Scott v. Janson*, 57 Ill. 2d 451, 460 (1974) (“there exists jurisdiction to abate public nuisances which may endanger the general welfare”); *Vill. of Wilsonville v. SCA Services, Inc.*, 86 Ill. 2d 1, 6 (1981).

The proposed Consent Order's strict requirements on Sterigenics amply demonstrate that through the efforts of IEPA, the Attorney General, and the DuPage County State's Attorney, the General Assembly's directive to protect human health and the environment has been met.

### **III. THE PROPOSED CONSENT ORDER**

The proposed Consent Order prohibits Sterigenics from resuming Operations until it puts measures in place that reduce emissions of EtO so low that any risk from these emissions will be below USEPA's "upper bound" lifetime cancer risk estimate of 1 in 10,000. In fact, the risk to the community from Sterigenics' emissions will be much closer to USEPA's most protective standard of 1 in 1,000,000 over a lifetime. In the event Sterigenics is able to achieve these stringent measures, the proposed Consent Order provides a framework for the operation of Sterigenics' facilities that is both protective of public health and the environment. The proposed Consent Order prohibits resumption of Operations at Willowbrook I until Sterigenics: (i) obtains a permit<sup>3</sup> from IEPA to install stringent new capture and control systems in the building that capture 100% of the emissions and satisfy a control efficiency of at least 99.9% or 0.2 ppm; and (ii) demonstrates through testing that the new systems meet the required standards. [Section III.D.1., 2.] This process may take up to six months, during which time Willowbrook I is prohibited from operating. [Sections III.D.1.] While Sterigenics may, at some later date, seek to resume Operations at Willowbrook II under similarly stringent requirements, the proposed Consent Order prohibits Willowbrook II from resuming Operations for the immediately foreseeable future. [Section III.D.9.] The proposed Consent Order also requires compliance with all other federal, state and local laws or regulations, including the Matt Haller Act. [Section III.D.12.] If entered, the

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<sup>3</sup> On June 24, 2019, Sterigenics submitted a construction permit application for Willowbrook I to IEPA.

proposed Consent Order would resolve the People’s Case and require the dismissal of the Seal Order Litigation. [Section III.J.] Additional details regarding the requirements applicable to Willowbrook I and II are provided below.

**A. Proposed Consent Order Requirements for Willowbrook I**

The proposed Consent Order includes the following prohibitions and requirements for Willowbrook I:

1. Prohibits resumption of Operations at Willowbrook I until Sterigenics meets the requirements in the Consent Order and obtains written authorization from the State to resume Operations [Section III.D.1.];
2. Provides that Sterigenics’ construction permit application submitted to IEPA on June 24, 2019, requesting the issuance of a construction permit containing additional capture and control measures at Willowbrook I, address or include at least the following [Section III.D.2.]:
  - a. air dispersion modeling demonstrating that EtO emissions attributable to any future Operations will be at or below a level satisfactory to IEPA [Section III.D.2.a.];
  - b. construction of a “permanent total enclosure” system that provides 100% capture of emissions [Section III.D.2.b.];
  - c. demonstration of a control efficiency of 99.9% or 0.2 ppm [Section III.D.2.b.];
  - d. installation of an additional scrubber [Section III.D.2.d.];
  - e. a proposed annual EtO usage limit [Section III.D.2.e.];<sup>4</sup>
  - f. a proposed annual emissions limit [Section III.D.2.f.];<sup>5</sup>
  - g. a proposal for a stack height increase [Section III.D.2.h.]; and
  - h. a continuous emissions monitoring system [Section III.D.2.i.];
3. Requires enhanced emissions testing to demonstrate compliance with the 99.9% or 0.2 ppm control efficiency during all phases of Operations [Section III.D.3.a.];

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<sup>4</sup> The June 24, 2019 construction permit application seeks an annual EtO usage limit at Willowbrook I of 300,000 pounds, as compared to the 542.1 tons (1,284,000 lbs) limit in Sterigenics’ current operating permit. Amended Complaint at ¶ 20.

<sup>5</sup> The June 24, 2019 construction permit application seeks an annual EtO emissions limit at Willowbrook I of no more than 85 pounds per year, as opposed to the 36,400 pound-per-year limit in Sterigenics’ current operating permit. Amended Complaint ¶ 21. In 2018, Sterigenics reported emitting 2,840 pounds. *Id.* ¶ 29.

4. Requires ambient air sampling pursuant to an IEPA-approved ambient air monitoring plan [Section III.D.3.b.];
5. Requires cessation of Operations if emissions testing demonstrates non-compliance with the 99.9% or 0.2 ppm control efficiency and allows Operations to resume only if measures are in place that ensure the required control efficiency is met, and IEPA-approved corrective measures are implemented [Section III.D.5.];
6. Prior to any resumption of Operations, Sterigenics must obtain, among other things, written approval from IEPA that Sterigenics has completed construction of the emissions capture and control systems [Section III.D.4.];
7. Requires implementation of specified best management practices [Section III.D.6.];
8. Replaces the Seal Order with the Consent Order, which prohibits resumption of Operations at Willowbrook I until specific conditions in the Consent Order are met [Section III.J.1.];
9. Requires compliance with all other federal, state and local laws or regulations, which includes the Matt Haller Act [Section III.D.12.];
10. Resolves the State's enforcement action against Sterigenics [Section III.J.2.]; and
11. Requires that the parties file a joint stipulation of dismissal of the Seal Order Litigation with prejudice [Section III.J.1.].

**B. Proposed Consent Order Requirements for Willowbrook II**

The proposed Consent Order prohibits resumption of Operations at Willowbrook II unless and until Sterigenics undertakes a separate process to meet the same stringent requirements applicable to Willowbrook I, which includes obtaining a construction permit from IEPA and amending the Consent Order to require compliance with the IEPA-issued construction permit. [Section III.D.9.]

**C. Comparison of the Matt Haller Act and the Proposed Consent Order**

Many of the provisions in the proposed Consent Order mirror requirements in the Matt Haller Act. Sterigenics will be required to comply with both sets of requirements. Both the

proposed Consent Order and the Matt Haller Act:

1. Provide the strictest requirements on EtO emissions at EtO sterilization sources in the nation, though the Consent Order only applies to Sterigenics' Willowbrook facility [*Compare* Consent Order Section III.D.1., 2. *with* Matt Haller Act Section 9.16(b)];
2. Require (a) 100% capture of all EtO emissions, and a demonstration of such capture of emissions, and (b) that emissions to the atmosphere from each exhaust point at the site must be reduced by at least 99.9% or 0.2 parts per million [*Id.*];
3. Require a limit on EtO usage [*Compare* Consent Order Section III.D.2.e. *with* Matt Haller Act Section 9.16(j)];
4. Require Sterigenics, as an EtO sterilization source, to (a) conduct EtO emissions testing pursuant to an IEPA-approved protocol and (b) submit documentation of the results of such tests to IEPA [*Compare* Consent Order Section III.D.3.a. *with* Matt Haller Act Section 9.16(b)];
5. Require cessation of Operations, if emissions testing demonstrates non-compliance with the 99.9% or 0.2 ppm control efficiency [*Compare* Consent Order Section III.D.5. *with* Matt Haller Act Section 9.16(c)];
6. In the event of a test failure and cessation of Operations, require corrective actions and IEPA approval prior to resumption of Operations [*Id.*];
7. Require continuous emissions monitoring of EtO emissions pursuant to an IEPA-approved plan [*Compare* Consent Order Section III.D.2.i. *with* Matt Haller Act Section 9.16(d)];
8. Require ambient air monitoring pursuant to an IEPA-approved plan [*Compare* Consent Order Section III.D.3.b. *with* Matt Haller Act Section 9.16(e)]; and
9. Require dispersion modeling that demonstrates to IEPA's satisfaction that EtO emissions will be adequately controlled [*Compare* Consent Order Section III.D.2.a. *with* Matt Haller Act Section 9.16(f)].

#### **D. The Proposed Consent Order has Requirements Beyond the Matt Haller Act**

While the proposed Consent Order requires compliance with the Matt Haller Act, it also sets forth additional measures, including:

1. Prohibiting the Site from resuming Operations until after Sterigenics constructs new emissions capture and control systems and receives written approval from IEPA [Sections III.D.1, 9];
2. Requiring ambient air monitoring near the Willowbrook facility and in the community every third day over a 30-day period while the facility is in operation [Section III.D.3.b.];
3. Subjecting Sterigenics to penalties and contempt of court for non-compliance with the terms of the proposed Consent Order;
4. Prohibiting resumption of Operations at Willowbrook II for the immediately foreseeable future [Section III.D.9.]; and
5. Requiring Sterigenics to undertake an environmentally beneficial project. The proposed Consent Order provides that Sterigenics shall put \$300,000 into an escrow account within 30 days of entry of the Consent Order, and within 60 days of entry, shall propose one or more projects to the State for approval that are designed to benefit the environment in the State of Illinois, preferably in the Village of Willowbrook or neighboring communities of DuPage County. The project(s) may include physical improvements or activities, such as educational scholarships or programming. The project(s) must be completed within one year of entry of the Consent Order, unless otherwise agreed to by Plaintiff. [Section III.A.]

#### **E. The Matt Haller Act's Other Requirements Applicable to Sterigenics**

The Matt Haller Act also contains other requirements that are separate from the Consent Order. Sterigenics must comply with the Matt Haller Act regardless of whether the provisions of the new law also appear in the Consent Order. (Consent Order Section III.D.12). Among other things, the Matt Haller Act also:

1. Prohibits any facility that has been the subject of a seal order from using EtO for sterilization or fumigation purposes unless: (i) a supplier of a product to be sterilized certifies that EtO sterilization is the only available method to completely sterilize the product; and (ii) IEPA certifies that the

facility's emissions control system uses technology that produces the greatest reduction in EtO emissions currently available; or, if a court finds that the supporting findings of the seal order are without merit [Matt Haller Act Section 9.16(g)];

2. Requires that an EtO sterilization source perform quarterly ambient air monitoring indefinitely [Matt Haller Act Section 9.16(e)]; and
3. Requires each EtO sterilization source to notify IEPA within 5 days after discovering any deviation from any of the requirements of the New EtO Law, the Illinois Environmental Protection Act, the USEPA's rules or the Illinois Pollution Control Board's rules relating to EtO [Matt Haller Act Section 9.16(l)].

#### **IV. ARGUMENT**

##### **A. Illinois Law Concerning Entry of Consent Orders**

In *Janson*, a case brought by the Illinois Attorney General under the Illinois Environmental Protection Act, the Illinois Supreme Court stated, “courts look with favor upon stipulations designed to simplify, shorten or settle litigation and save costs to parties, and will, when called upon in any appropriate manner, compel parties to observe such stipulations unless they are illegal or contrary to public policy.” 57 Ill. 2d at 460 (quoting *People ex rel. Stead v. Spring Lake Drainage and Levee District*, 253 Ill. 479, 493 (1912)). Similarly, in reviewing a settlement of an environmental case before the Board, the Third District Appellate Court found that “the public interest is better served by a procedure which encourages respondents to enter into settlement discussions and negotiations by which respondents may avoid the stigma of a finding of violation, and assist the State in effectuating the goals of the Act . . . .” *People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 825 (3d Dist. 1986). “By allowing the State and respondents to reason together the result will conserve resources which would otherwise be expended in litigation.” *Id.* The Consent Order now under review fully advances the public policy of the State by incorporating the recent environmental protections demanded by the Matt Haller Act and advancing the purpose of the Illinois Environmental Protection Act, “to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” 415 ILCS 5/2(b).

##### **B. Law Concerning Entry of Proposed Consent Decrees in Federal Court**

While this Court is not bound by federal circuit or district court cases, *Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 21, the entry of consent decrees in federal court provides a process for entry of a consent order that should inform this Court’s entry of the proposed Consent Order.

Entry of a consent decree filed in federal district court is a judicial act that is committed to the sound discretion of the district court. *Madison Cty Jail Inmates v. Thompson*, 773 F.2d 834, 845 (7th Cir. 1985). Courts, however, should exercise this discretion in a limited and deferential manner, as the fairness of a settlement is “a matter best left to negotiation between the parties.” *Mars Steel Corp. v. Cont’l Illinois Nat’l Bank and Trust Co. of Chicago*, 834 F.2d 677, 681 (7th Cir. 1987). Thus, in evaluating whether to enter a consent order or decree, courts consider the following three factors: (1) fairness, both procedural and substantive; (2) reasonableness; and (3) consistency with applicable law.<sup>6</sup> *United States v. George A. Whiting Paper Co.*, 644 F.3d 368, 372 (7th Cir. 2011).

**C. The Proposed Consent Order is Fair, Reasonable, and Consistent with Existing Law**

**1. The Proposed Consent Order is Procedurally and Substantively Fair**

A consent order is procedurally fair if the negotiations in reaching the settlement were in good faith and at arms-length between the parties. *Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996); *United States v. BP Expl. & Oil Co.*, 167 F. Supp. 2d 1045, 1051–52 (N.D. Ind. 2001) (citing *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990)). In this case, the

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<sup>6</sup> Similar to the standard used by the federal courts, including in environmental cases, Illinois class action cases require a court to evaluate a settlement to determine if it is “fair, reasonable, and adequate.” *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 45. Applying this standard is appropriate in these related complex environmental cases with significant public interest.

People, IEPA, and Sterigenics vigorously litigated this case<sup>7</sup> and engaged in lengthy and detailed settlement discussions for months. As in *Cannons*, the proposed Consent Order resulted from arm's-length negotiations. *See* 899 F.2d at 87 (“[g]iven that the decrees were negotiated at arm's length among experienced counsel . . . and that the agency operated in good faith, the finding of procedural fairness is eminently supportable.”). The proposed Consent Order has been negotiated in coordination with the Attorney General's Office, the DuPage County State's Attorney's Office and IEPA, who possess the requisite technical expertise and statutory responsibility for enforcing the Illinois Environmental Protection Act. In short, all parties were represented by experienced environmental attorneys and knowledgeable technical personnel, and the negotiations have been undertaken in good faith.

The proposed Consent Order is also substantively fair, promoting accountability and corrective measures relative to the alleged violations. As discussed in detail above, the proposed Consent Order prohibits Sterigenics from resuming Operations until such time as IEPA approves the significant compliance activities that will substantially reduce EtO emissions from the Site. In addition, Sterigenics must undertake a \$300,000 environmentally-beneficial project, as more fully described above. The relief included in the proposed Consent Order reflects the parties'

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<sup>7</sup> With respect to the People's Case, (i) on December 5, 2018, Sterigenics filed a Notice of Removal of the People's Case. *See People of the State of Illinois, et al. v. Sterigenics U.S., LLC*, No. 18-cv-8010 (U.S. Dist. Ct., N.D. Ill.) (Dkt. 1.) (ii) On January 3, 2019, the People timely filed a Motion to Remand the case to state court. (*Id.* at Dkt. 28.) (iii) Following extensive briefing on the People's Motion to Remand, on March 11, 2019, the District Court granted the motion. (*Id.* at Dkt. 35, 36, 44, 45, 46, 47, 48.) With respect to the Federal Litigation, (a) On February 18, 2019, Sterigenics filed a two-count complaint in federal court, attempting to lift the Seal Order. (*Id.* at Dkt. 1.) Sterigenics also immediately filed a motion for a temporary restraining order, which, after briefing and oral argument, was denied on February 20, 2019. (*Id.* at Dkt. 5, 51-1.) (b) On February 22, 2019, Kim and IEPA filed an amended motion to dismiss the initial complaint. (*Id.* at Dkt. 33.) (c) On March 7, 2019, Sterigenics elected to file an amended complaint. (*see id.* at Dkt. 54, 55.) (d) On March 15, 2019, Kim and IEPA filed their motion to dismiss the amended complaint. (*Id.* at Dkt. 63, 64.) (f) On May 3, 2019, the District Court granted Kim's and IEPA's motion to dismiss Sterigenics' amended complaint for lack of federal court jurisdiction. (*Id.* at Dkt. 77, 78, 79.)

careful and informed assessment of the relative merits of each other's claims, while taking into consideration the costs and risks associated with litigation. *See United States v. Wis. Elec. Power Co.*, 522 F. Supp. 2d 1107, 1118 (E.D. Wis. 2007) (discussing defenses and risks associated with litigation in context of entering a Clean Air Act consent decree). In particular, while the People and IEPA have extensive authority to seek permanent injunctive relief to rectify and mitigate the violations, obtaining injunctive relief in litigation would depend upon both a finding of liability and a judicial assessment of the type and degree of necessary relief. The injunctive relief provided by the proposed Consent Order is the exact injunctive relief the People would have sought through litigation of the matter. Additionally, the Consent Order fully resolves the Seal Order Litigation, which sought to revoke the IEPA seal order and allow a resumption of operations at the Willowbrook facilities, with **NO** added pollution control mandates.

The substantive fairness of the settlement is also buttressed by the fact that the proposed Consent Order will achieve results more quickly than could be attained through continued litigation. First, the proposed Consent Order obtains all of the injunctive relief which IEPA and the People believe are necessary to achieve the goals of the Illinois Environmental Protection Act and ensures that if Sterigenics is to resume Operations, it must significantly reduce EtO emissions from the Site. Second, the proposed Consent Order requires Sterigenics to place \$300,000 in escrow within 30 days after its entry, which may only be used to complete Plaintiff-approved environmentally beneficial project(s). (Consent Order Section III.D.A.) Third, it resolves the Seal Order Litigation. (Consent Order Section III.J.1.) Fourth, all parties and the public benefit from the entry of a Consent Order enforceable by the DuPage County Circuit Court. In short, the proposed Consent Order is fair in light of the arms-length negotiations that led to the settlement,

the substantial benefit to the public from the significant EtO emissions reductions, and the risks and expense of continuing litigation.

## **2. The Proposed Consent Order is Reasonable**

The comprehensive injunctive relief imposed by the proposed Consent Order will improve air quality, protect the environment, and address the hazards of Sterigenics' alleged non-compliance. The proposed Consent Order requires Sterigenics to, among other things, undertake construction of permanent total enclosure that provides 100% capture of all EtO emissions and provide a demonstration of a control efficiency of its EtO emissions of 99.9% or 0.2 ppm, both signature requirements of the Matt Haller Act. These measures and the others listed above are protective of human health and the environment and further the purposes of the Illinois Environmental Protection Act. *See* 415 ILCS 5/2 and 5/8 (2018). In addition, Sterigenics is required to perform one or more environmentally-beneficial projects totaling \$300,000. Accordingly, the proposed Consent Order is reasonable.

## **3. The Proposed Consent Order is Consistent with Applicable Law and the Public Interest**

Under Illinois law, the General Assembly's expressed goal for the Illinois Environmental Protection Act is "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (2018). The specific purpose of the Illinois Environmental Protection Act concerning air pollution, as set forth in Title II, which includes the recently enacted Matt Haller Act, is to "restore, maintain, and enhance the purity of the air of this State." 415 ILCS 5/8 and 5/9.16 (2018).

As discussed above, this settlement comports with the Illinois Environmental Protection Act's goals of protecting and enhancing air quality by significantly reducing harmful EtO emissions and securing significant public health and environmental benefits. The proposed

Consent Order thus furthers the goals of the Illinois Environmental Protection Act and the public interest by achieving a healthier environment without the burdens and uncertainties of further litigation.

## **V. CONCLUSION**

The proposed Consent Order is fair, reasonable, in the public interest, and consistent with the purposes of the Illinois Environmental Protection Act and the Matt Haller Act. Therefore, the People respectfully request that the Court grant the Joint Motion to Enter the Proposed Consent Order, enter the proposed Consent Order as an order of the Court, retain jurisdiction over this action in accordance with the terms of the proposed Consent Order, and grant such other and further relief as the Court deems necessary.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

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